

PATENT

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Date:

2-21-05
Himanshu S. Amin

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Applicant(s): Jeff A. Zimniewicz, *et al.*

Examiner: Michael J. Yigdall

Serial No: 09/771,761

Art Unit: 2122

Filing Date: January 29, 2001

Title: SYSTEM AND METHOD TO FACILITATE INSTALLATION AND/OR
REMOVAL OF COMPONENTS

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Applicants submit this brief in connection with an appeal of the above-identified patent application. A credit card payment form is filed concurrently herewith in connection with all fees due regarding this appeal brief. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [MSFTP195US].

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I. Real Party in Interest (37 C.F.R. §41.37(c)(1)(i))

The real party in interest in the present appeal is Microsoft Corporation, the assignee of the present application.

II. Related Appeals and Interferences (37 C.F.R. §41.37(c)(1)(ii))

Appellants, appellants' legal representative, and/or the assignee of the present application are not aware of any appeals or interferences which may be related to, will directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims (37 C.F.R. §41.37(c)(1)(iii))

Claims 1-31 stand rejected by the Examiner. The rejection of claims 1-31 is being appealed.

IV. Status of Amendments (37 C.F.R. §41.37(c)(1)(iv))

No claim amendments have been entered after the Final Office Action.

V. Summary of Claimed Subject Matter (37 C.F.R. §41.37(c)(1)(v))**A. Independent Claim 1**

Independent claim 1 recites a system to facilitate installation and/or removal of components including at least one shared component, comprising: a validation engine operative to provide a valid order; and an installer operative to control at least one of an install and removal operation of the components based on the valid order and operative to effect manipulation of at least one property associated with the at least one shared component to reflect dependency for the at least one shared component according to the installation or removal thereof. (See e.g., paragraphs [0008]-[0010]).

B. Independent Claim 13

Independent claim 13 recites a system to facilitate installation of components including at least one shared component, comprising: a setup manager which

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controls installation of the components; dependency manager which provides a valid installation order based on metadata associated with at least some of the components; wherein the setup manager causes the components to be installed according to the valid installation order, a separate shared installation of the at least one shared component being implemented for each dependent component that depends on the at least one shared component. (*See e.g.*, paragraphs [0008]-[0010]).

C. Independent Claim 23

Independent claim 23 recites a system to facilitate installation and/or removal of components including at least one shared component, comprising: a validation component operative to provide a valid order based on setup data; and a setup engine operative to initiate installation of each of the components according to the valid order during a first part of the installation, the shared component being installed for a first dependent component during the first part of installation, the shared component being installed for each other dependent component during a second part of the installation separate from the first part. (*See e.g.*, paragraphs [0008]-[0010]).

D. Independent Claim 24

Independent claim 24 recites a system to facilitate installation and/or removal of components including at least one shared component, comprising: a dependency manager operative to provide a valid order based on setup data; and a setup engine operative to initiate installation of each of the components according to the valid order during a first part of the installation, the shared component being installed for a first dependent component during the first part of installation, the shared component being installed for each other dependent component during a second part of the installation, which is subsequent to the first part; wherein a setup manager is operative to effect manipulation of at least one property associated with the at least one shared component to reflect dependency characteristics of the at least one shared component as a function of at least one of installation of the shared component and removal of a dependent component that depends on the at least one shared component. (*See e.g.*, paragraphs [0041]-[0046]).

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E. Independent Claim 25

Independent claim 25 recites a system to facilitate installation and/or removal of components including at least one shared component, comprising: means for providing a valid order for the components. (*See e.g.*, [0009]). In addition, independent claim 25 recites means for controlling installation of the components based on the valid order. (*See e.g.*, [0010]). And further, independent claim 25 provides means for manipulating at least one property associated with the at least one shared component to reflect dependency for the at least one shared component based on at least one installation of the shared component and removal of a dependent component that depends on the at least one shared component. (*See e.g.*, [0010])

The aforementioned means for limitations are identified as claim elements subject to the provisions of 36 U.S.C. §112 ¶6. The corresponding structures are identified with reference to the specification and drawings in the parentheses above corresponding to those claim limitations.

F. Independent Claim 26

Independent claim 26 recites a method to facilitate installing and/or removing components including at least one shared component, the method comprising: providing a valid order; installing each of the plurality of components based on the valid order; and modifying at least one property associated with the at least one shared component to reflect dependency characteristics of the at least one shared component relative dependent components operative to use the at least one shared component. (*See e.g.*, [0012]-[0013]).

G. Independent Claim 31

Independent claim 31 recites a method to facilitate installing and/or removing components including at least one shared component, the method comprising: providing a valid order; effecting installation of each of the components during a first part of installation according to the valid order, the shared component being installed for a first dependent component during the first part of the installation; effecting installation of

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the shared component for each other dependent component during a second part of the installation separate from the first part. (See e.g., [0030]-[0031])

VI. Grounds of Rejection to be Reviewed (37 C.F.R. §41.37(c)(1)(vi))

A. Claims 1, 8-13, 16, 18, 21-22 and 25-26 stand rejected under 35 U.S.C. §102(e) as being anticipated by Curtis (US 6,442,754).

B. Claims 2-4, 14-15, 17, 23-24 and 29-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Curtis as applied to claims 1, 13 and 25, in view of Taylor (US 5,721,824).

C. Claims 5-7, 19-20 and 27-28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Curtis as applied to claims 1, 18 and 26, in view of Kruger *et al.* (US 6,367,075).

VII. Argument (37 C.F.R. §41.37(c)(1)(vii))

A. Rejection of Claims 1, 8-13, 16, 18, 21-22 and 25-26 Under 35 U.S.C. §102(e)

Claims 1, 8-13, 16, 18, 21-22 and 25-26 stand rejected under 35 U.S.C. §102(e) as being anticipated by Curtis (US 6, 442,754). This rejection should be withdrawn for at least the following reasons. Curtis fails to disclose each and every limitation set forth in the subject claims.

A single prior art reference anticipates a patent claim only if it expressly or inherently describes *each and every limitation set forth in the patent claim*. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); *See Verdegaaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The *identical invention must be shown in as complete detail as is contained in the ... claim*. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

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Independent claims 1, 13, 25 and 26 recite similar limitations, namely: a system to facilitate installation and/or removal of components including at least one shared component, comprising *a validation engine operative to provide a valid order*, and *an installer operative to control at least one of an installation and removal operation of components based on the valid order* and operative to effect manipulation of at least one property associated with the at least one shared component to reflect dependency for the at least one shared component according to the installation or removal thereof.

It is apparent that applicants' claimed invention utilizes a validation engine to establish and impose a valid ordering of components to be installed and/or removed. Once a valid ordering has been established, an installer utilizes the valid ordering provided by the validation engine to control the installation and/or removal of components. Based on the valid order, the installer manipulates at least one property associated with at least one shared component to reflect dependency for the at least one shared component according to the installation or removal of that component. Curtis fails to disclose these novel aspects of the invention as claimed.

Curtis discloses a system, method, program and data structure for installing a program on a computer. (See Abstract). The cited document however, fails to disclose a validation engine operative to provide a valid order for the installation and/or removal of components as in applicants' claimed invention. Rather, Curtis discloses a "check_dependency" function that determines whether a file, program or registry object indicated in a dependency list is installed on the computer. (See col. 11 lines 17-20). In other words, the cited document utilizes a check_dependency function to provide a list of dependency objects that must be installed before a depending program is installed. However, Curtis does not impose a valid ordering on the list of dependency objects created by the check_dependency function. Thus for example, if after executing the check_dependency function as disclosed in Curtis it is ascertained that a depending program requires a plethora of dependent objects to be installed prior to the installation/removal of the depending program, no order is established as to which of the multiplicity of dependent objects generated by the check_dependency function should be initially installed/removed. In other words, any one of the multitude of dependent objects presented to the user by the check_dependency function can arbitrarily be installed and/or

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removed. In contrast, the invention as claimed provides and utilizes a validation engine that establishes a valid order for the installation and/or removal of components, e.g., the claimed invention resolves and imposes an ordering for each dependent component, thus establishing the particular order in which the particular component should be installed/removed prior to the installation of the depending component.

In the Advisory Action (dated December 14, 2004), the Examiner asserts that applicants' representative acknowledged that the check_dependency function generates a list indicative of the dependent components that must be installed prior to installing the depending program. While applicants' representative does not disagree with the characterization that Curtis discloses a check_dependency function that provides a list that indicates dependent components that must be installed prior to the installation of a depending program, the point of distinction that applicants' representative was advancing, and is reiterated herein, is that Curtis, unlike applicants' invention as claimed, does not impose a valid order to the generated list (e.g., the order in which the dependent objects should be installed and/or removed by the installer).

In view of at least the foregoing comments, it is apparent that applicants' claimed invention as recited in the subject claims is distinguishable from Curtis, and that the rejection of independent claims 1, 13, 25 and 26 (and claims that depend there from) should be withdrawn.

B. Rejection of Claims 2-4, 14-15, 17, 23-24 and 29-31 Under 35 U.S.C. §103(a)

Claims 2-4, 14-15, 17, 23-24 and 29-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Curtis as respectively applied to claims 1, 13 and 26 and in view of Taylor. Reversal of this rejection is respectfully requested for at least the following reasons. The combination of Curtis and Taylor fails to teach or suggest all limitations set forth in the subject claims.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the

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references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) *must teach or suggest all the claim limitations*. See MPEP §706.02(j). The *teaching or suggestion to make the claimed combination* and the reasonable expectation of success *must be found in the prior art and not based on the Applicant's disclosure*. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

Independent claims 23, 24 and 31 recite similar limitations, namely: a validation component operative to provide a valid order, and a setup engine operative to initiate installation of each of the components according to the valid order. As discussed *supra*, Curtis does not disclose a validation component capable of providing a valid order. Curtis simply provides a "check_dependency" function that determines whether file or programs are currently installed on a computer. Curtis does not disclose the imposition of a valid ordering on the installation and/or removal of components.

Further, as the Final Office Action (dated September 23, 2004) concedes, Curtis fails to teach or suggest a setup engine operative to initiate installation of each of the components according to a valid order during a first part of the installation, the shared component being installed for a first dependent component during the first part of the installation, and a shared component being installed for each other dependent component during a second part of the installation separate from the first part. In recognition that Curtis is deficient in this regard, the Examiner offers Taylor to cure the deficiency.

Taylor discloses installing software packages having at least one dependent software package to also be installed on a server or a standalone file space, a multiple client file space or both in a file system of the server and one or more clients. (See col. 1, lines 11-15). Taylor utilizes an action list of dependent packages built during the installation of the dominant package; however, like Curtis, Taylor fails to establish and impose an ordering on the installation and/or removal of components. The invention as claimed in contrast, ensures that a valid ordering of components is established prior to the setup engine initiating installation of the components according to the valid order provided by the validation component. Thus it is submitted that the claimed invention is

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clearly distinguishable from both Curtis and Taylor, as both fail to teach or suggest a validation component that provides a valid ordering of components that need to be installed/removed, and further, because Taylor in particular fails to initiate installation of each of the components according to the valid order established by the validation component.

In view of at least the foregoing comments, it is submitted that the combination of Curtis and Taylor, either individually or in combination, does not render obvious applicants' claimed invention as recited in independent claims 23, 24 and 31 (and dependent claims 2-4, 14-15, 17, 29-30 and 32). Accordingly, reversal of this rejection is respectfully requested.

C. Rejection of Claims 5-7, 19-20 and 27-28 Under 35 U.S.C. §103(a)

Claims 5-7, 19-20 and 27-28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Curtis as applied to claims 1, 18 and 26 above and in view of Kruger *et al.* (US 6,367,075). Reversal of this rejection and allowance of the subject claims is respectfully requested for at least the following reasons. Claim 5-7, 19-20 and 27-28 depend from independent claims 1, 13 and 26 respectively, and Kruger *et al.* does not makeup for the aforementioned deficiencies with respect to Curtis. Accordingly, this rejection should be withdrawn.

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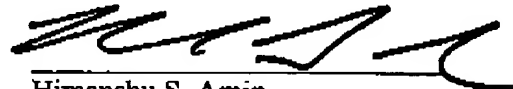
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Conclusion

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited references. Accordingly, it is respectfully requested that the rejections of claims 1-31 be reversed.

If any additional fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Respectfully submitted,
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VIII. Claims Appendix (37 C.F.R. §41.37(c)(1)(viii))

1. A system to facilitate installation and/or removal of components including at least one shared component, comprising:
 - a validation engine operative to provide a valid order; and
 - an installer operative to control at least one of an install and removal operation of the components based on the valid order and operative to effect manipulation of at least one property associated with the at least one shared component to reflect dependency for the at least one shared component according to the installation or removal thereof.
2. The system of claim 1, wherein the valid order identifies shared components for installation subsequent to non-shared components.
3. The system of claim 2, wherein the installer is operative to initiate a method to install each of the components based on the valid order during a part of the installation, the at least one shared component being installed and configured for a selected dependent component during the first part of installation.
4. The system of claim 3, wherein the method is operative to employ a second part of the installation to install the at least one shared component for each dependent component other than the selected dependent component during the second part of the installation.
5. The system of claim 1, wherein the at least one property further comprises a reference count having a value indicative of a number of dependent components associated with the at least one shared component.
6. The system of claim 5, wherein the installer is operative to effect an increase in the value of the reference count for each installation of the at least one shared component.

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7. The system of claim 5, wherein the installer is operative to effect a decrease in the value of the reference count in response to removal of a dependent component that depends on the at least one shared component.

8. The system of claim 1, wherein the at least one property further comprises configuration data indicative of an operating relationship of the at least one shared component and each installed dependent component associated with the at least one shared component.

9. The system of claim 1, wherein the installer is operative to control installation of the at least one shared component, such that a single set of files for the at least one shared component are copied as part of the installation for use by associated dependent components.

10. The system of claim 9, wherein the at least one shared component has associated metadata operable to identify the at least one shared component as a shared component.

11. The system of claim 10, wherein the at least one shared component requires at least one dependent component to perform a substantially useful function.

12. The system of claim 11, wherein a runtime dependency exists between an installed dependent component and the shared component on which the dependent component depends.

13. A system to facilitate installation of components including at least one shared component, comprising:

- a setup manager which controls installation of the components;
- dependency manager which provides a valid installation order based on metadata associated with at least some of the components;

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wherein the setup manager causes the components to be installed according to the valid installation order, a separate shared installation of the at least one shared component being implemented for each dependent component that depends on the at least one shared component.

14. The system of claim 13, wherein the dependency manager is operative to validate a received installation order, which, upon validation of the received installation order, becomes the valid installation order.

15. The system of claim 14, wherein, if the received installation order is improper, the dependency manager is operative to create the valid installation order.

16. The system of claim 13, wherein metadata associated with the at least one shared component identifies the at least one shared component as a shared component.

17. The system of claim 13, wherein the setup manager is operative to initiate a method to install each of the components according to the valid installation order during a first part of the installation, the at least one shared component being installed for a first dependent component during the first part of installation, the method being operative to install the at least one shared component for each other dependent component during a second part of the installation.

18. The system of claim 13, further comprising at least one property associated with an installed instance of the at least one shared component which reflects dependency for the at least one shared component.

19. The system of claim 18, wherein the at least one property further comprises a reference count having a value indicative of a number of dependent components associated with the at least one shared component.

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20. The system of claim 19, wherein the setup manager is operative to control the value of the reference count as a function of each installation and removal of the at least one shared component.

21. The system of claim 13, wherein the at least one property further comprises configuration data indicative of an operating relationship of the at least one shared component and each dependent component associated with the shared component.

22. The system of claim 13, wherein the setup manager is operative to control installation of the at least one shared component based on the valid installation order, such that a single set of program files for the shared component is copied as part of the installation.

23. A system to facilitate installation and/or removal of components including at least one shared component, comprising:

a validation component operative to provide a valid order based on setup data; and

a setup engine operative to initiate installation of each of the components according to the valid order during a first part of the installation, the shared component being installed for a first dependent component during the first part of installation, the shared component being installed for each other dependent component during a second part of the installation separate from the first part.

24. A system to facilitate installation and/or removal of components including at least one shared component, comprising:

a dependency manager operative to provide a valid order based on setup data; and

a setup engine operative to initiate installation of each of the components according to the valid order during a first part of the installation, the shared component being installed for a first dependent component during the first part of installation, the

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shared component being installed for each other dependent component during a second part of the installation, which is subsequent to the first part;

wherein a setup manager is operative to effect manipulation of at least one property associated with the at least one shared component to reflect dependency characteristics of the at least one shared component as a function of at least one of installation of the shared component and removal of a dependent component that depends on the at least one shared component.

25. A system to facilitate installation and/or removal of components including at least one shared component, comprising:

means for providing a valid order for the components;

means for controlling installation of the components based on the valid order; and

means for manipulating at least one property associated with the at least one shared component to reflect dependency for the at least one shared component based on at least one installation of the shared component and removal of a dependent component that depends on the at least one shared component.

26. A method to facilitate installing and/or removing components including at least one shared component, the method comprising:

providing a valid order;

installing each of the plurality of components based on the valid order; and

modifying at least one property associated with the at least one shared component to reflect dependency characteristics of the at least one shared component relative dependent components operative to use the at least one shared component.

27. The method of claim 26, wherein the at least one property further comprises a reference count having a value indicative of a number of dependent components that depend on the at least one shared component.

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28. The method of claim 27, further comprising controlling the value of the reference count in response to each installation of the at least one shared component and removal of a dependent component that depends on the at least one shared component.

29. The method of claim 26, further comprising effecting installation of each of the components during a first part of installation according to the valid order, the shared component being installed for a first dependent component during the first part of the installation.

30. The method of claim 29, further comprising effecting installation of the shared component for each other dependent component that depends on the shared component during a second part of the installation, which is separate from the first part.

31. A method to facilitate installing and/or removing components including at least one shared component, the method comprising:

- providing a valid order;
- effecting installation of each of the components during a first part of installation according to the valid order, the shared component being installed for a first dependent component during the first part of the installation;
- effecting installation of the shared component for each other dependent component during a second part of the installation separate from the first part.

IX. Evidence Appendix (37 C.F.R. §41.37(c)(1)(ix))

None.

X. Related Proceedings Appendix (37 C.F.R. §41.37(c)(1)(x))

None.